LANNY RAY SOUTHARD

IBLA 83-145 Decided April 30, 1985

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring various mining claims abandoned and void for failure to file annual proof of labor or notice of intent to hold the claims. I MC 35701 through I MC 35708.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

> The failure to file the instruments required by sec. 314 of FLPMA, 43 U.S.C. § 1744 (1982), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

> The filing of evidence of annual assessment work in the county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

3. Constitutional Law: Generally -- Federal Land Policy and

> Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

> The Supreme Court has definitively established in United States v. Locke, 53 U.S.L.W. 4433 (Apr. 2, 1985), that the provisions of sec. 314 of FLPMA, which provide that, upon the failure of a mining claimant to timely file annually either evidence of the performance of annual assessment work or a notice of intention to hold a mining claim, the claim is conclusively deemed abandoned and void, is constitutional and does not result in a deprivation of due process of law.

APPEARANCES: Lanny Ray Southard, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Lanny Ray Southard has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated October 14, 1982, which declared eight mining claims 1/ abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the claims for calendar year 1981.

The claims involved in this appeal were all located prior to the adoption of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1982). Therefore, under section 314 of FLPMA, it was necessary to both file a copy of the notice of location and also file either evidence of assessment work or a notice of intention of hold the claims on or before October 22, 1979. See 43 U.S.C. § 1744(a) and (b) (1982). Pursuant thereto one Ralph Page, appellant's predecessor-in-interest, caused the subject claims to be recorded and filed the necessary proof of labor.

At the time of recordation, Page treated his claims as three distinct groupings. The first grouping consisted solely of the Argosy placer. The second grouping was referred to as the Rio Vista group and included seven claims. The third grouping was referred to as the Lime Peak group, and consisted of a total of eleven claims. The Lime Peak group is not involved in this appeal. In 1979 and 1980, Page transferred the Argosy and Rio Vista group of claims to appellant.

Affidavits of assessment work for all three groups of claims were filed in 1980. In 1981, however, BLM received an affidavit of labor only for the Lime Peak group. In 1982, BLM received affidavits for all three groups. Upon receipt of these filings on September 28, 1982, BLM issued the subject decision declaring the Argosy and the Rio Vista group of claims abandoned and void for failure to file the required documents in calendar year 1981.

On appeal, argues that he performed his assessment work for 1981 and duly filed it in the county. In support of his assertion he has submitted copies of his 1981 assessment year affidavits which show that they were recorded in Adams County on May 22, 1981. He also contends that BLM should not be able to declare his claims abandoned and void without first providing him with notice and an opportunity for a hearing. We will deal with these arguments seriatim.

[1, 2] First, the Board has consistently held, in conformity to the statute and applicable regulations (43 CFR Subpart 3833), that the owner of an unpatented mining claim located on public land before October 21, 1976, must file within the proper BLM office by October 22, 1979, and on or before December 30 in each subsequent calendar year, a notice of intention to hold or proof of assessment work performed on the claim. See, e.g., Jayne A. McHargue, 61 IBLA 163 (1982); Kathryn McKenzie, 58 IBLA 65 (1981).

1/ The claims involved in this appeal are Argosy placer mining claim and the Lime Peak Nos. 1, 2, and 3, the Warrior, Red Devil, Cheyenne and Polestar lode mining claims. These claims are serialized as I MC 35701 through I MC 35708, inclusive.

Appellant points out that he did file his affidavit for recordation in the county. While this may have met the requirements of Idaho State law as far as recordation of assessment work performed is concerned, it did not accomplish compliance with the Federal recordation statute. Section 314 is independent from both state recordation requirements and the annual assessment work requirement of 30 U.S.C. § 28 (1976). Thus, neither actual performance of the assessment work nor filing evidence thereof in the county constitutes full compliance with section 314. The requirements of section 314 are met only where a claimant files annually with BLM a copy of the affidavit of labor or notice of intention to hold the claim which he or she filed in the county. Appellant does not suggest that he did, in fact, submit a copy of his affidavit of labor to BLM within calendar year 1981. Since such a filing was not made, the statute clearly compels the conclusion that the instant claims are abandoned and void. 43 U.S.C. § 1744(c) (1982).

[3] The basic thrust of appellant's second argument is that he did not intend to abandon his claims and that BLM should not be allowed to declare his claims abandoned and void without first affording him notice and an opportunity for hearing. In support of this position, he cites the decision of the Montana District Court in Rogers v. United States, 575 F. Supp. 4 (1982).

In Rogers v. United States, supra, the court held that the failure of section 314 of FLPMA to provide for notice and an opportunity for hearing prior to a determination that claims were abandoned and void violated fundamental procedural due process. A similar decision was subsequently issued by the Nevada District Court in Locke v. United States, 573 F. Supp. 472 (1983). An appeal from this latter decision was taken to the United States Supreme Court. On April 1, 1985, the Supreme Court reversed the decision of the Nevada District Court sub nom. United States v. Locke, 53 U.S.L.W. 4433 (U.S. Apr. 2, 1985).

The Supreme Court noted that "Congress has made it unnecessary to ascertain whether the individual in fact intends to abandon the claim, and there is no room to inquire whether substantial compliance is indicative of the claimant's intent -- intent is simply irrelevant if the required filing are not made." Id. at 4438. Thus, inasmuch as appellant does not allege that he did make a filing within calendar year 1981, there is not need for a fact-finding hearing as to whether appellant intended to abandon his claims. The failure to file, in and of itself, constituted abandonment of his claims under the statute. Appellant has not been deprived of any due process rights. Id.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge.

C. Randall Grant, Jr.
Administrative Judge